

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

2003 VOLKSWAGEN PASSAT  
WASHINGTON LICENSE PLATE 709  
YUV VIN WVVUK63B53P343877 et  
al.,

Defendants.

NO. CV-09-3087-EFS

**ORDER GRANTING THE USAO'S  
MOTION TO STRIKE ANSWER AND  
DENYING AS MOOT POTENTIAL  
CLAIMANTS' MOTION FOR SUMMARY  
JUDGMENT**

Before the Court, without oral argument, is potential claimants Jasmine Rangel and Rogelio Moreno Garcia's Motion for Summary Judgment (ECF No. [55](#)), and the United States Attorney's Office's ("USAO") Motion to Strike Answer (ECF No. [59](#)). After reviewing the submitted materials and relevant authority, the Court is fully informed and denies as moot Ms. Rangel and Mr. Moreno's motion and grants the USAO's motion. The reasons for the Court's decision are set forth below.

**BACKGROUND**

**A. The Underlying Criminal Investigation**

This civil forfeiture action flows from the related criminal case, *United States v. Juvenal Moreno Garcia*, No. CR-09-2054-RHW. In that

1 prosecution, Juvenal Moreno Garcia was charged with being an alien in  
2 possession of a firearm under 18 U.S.C. § 922(g)(5), being a felon in  
3 possession of a firearm in furtherance of a drug trafficking crime under  
4 § 924(c)(1)(A), and possessing a controlled substance with intent to  
5 distribute under 21 U.S.C. § 841(a)(1).

6 On April 27, 2009, search and seizure warrants were issued for 7550  
7 Lateral A Road, Wapato, Washington 98951, and 231 Windy Ridge Lane,  
8 Moxee, Washington 98936. (ECF No. 32, Attach. A & B.) Those warrants  
9 were executed on April 28, 2009, and returned on May 6, 2009. *Id.* On  
10 May 7, 2009, the Office of Fines, Penalties, and Forfeitures (FP&F) sent  
11 notices of the seizures to all individuals who appeared to have an  
12 interest in the merchandise seized: Alfonso Rangel, Juvenal Moreno  
13 Garcia, Jasmine Rangel, Antonia Garcia Mendoza, Francisco Moreno,  
14 Francisco Moreno Mendoza. *Id.* Attach. C. A similar notice was sent to  
15 Luis Corono Martinez on May 18, 2009. *Id.*

17 On August 27, 2009, the FP&F referred the matter to the USAO for  
18 initiation of a judicial forfeiture action. *Id.* Attach. D.

19 **B. The Civil Forfeiture Action<sup>1</sup>**  
20

21 <sup>1</sup> In a civil forfeiture action, the USAO is the Plaintiff, the  
22 property/asset is the Defendant, and the Claimant is an intervenor  
23 seeking to challenge the forfeiture of the defendant property. *Via Mat*  
24 *Int'l S. Am., Ltd. v. United States*, 446 F.3d 1258, 1264 (11th Cir. 2006)  
25 (A civil forfeiture proceeding is not an action against the claimant but  
26 rather is an *in rem* proceeding against the property.).

1 The USAO filed its Verified Complaint for Civil Forfeiture *In Rem*  
2 in this Court on September 4, 2009. (ECF No. 1.) The Complaint seeks  
3 forfeiture of the following assets:

4 1. 2003 Volkswagen Passat, Washington License Plate: 709 YUV, VIN:  
5 WVWUK63B53P343877;

6 2. 2004 Cadillac SRX, Washington License Plate: 631 YOD, VIN:  
7 1GYEE63A740149536;

8 3. 1963 Chevrolet Impala, Washington License Plate: 491 WOE, VIN:  
9 31847L193642;

10 4. 1937 Chevrolet Sedan, Washington License Plate: 766, NOQ, VIN:  
11 21GA0428601;

12 5. 1988 Sea Doo Bombardier Jet Ski, HIN: USCEC1023C898, with a 1998  
13 Shore Boat Trailer, Washington License Plate: 7238SU, VIN:  
14 1MDHG8P13WA004108; and  
15

16 6. \$2,696.00 U.S. Currency.

17 On September 28, 2009, the Clerk's Office issued a Warrant of Arrest  
18 *In Rem*, pursuant to a Court Order of that same date. (ECF Nos. 3 & 4.)  
19 A Notice of Civil Forfeiture Action was posted on the official government  
20 website from September 27, 2009, to October 26, 2009. (ECF No. 30.) The  
21 Warrant was returned executed on November 17, 2009. (ECF No. 5.)  
22

23 On January 12, 2010, Juvenal Moreno Garcia entered into a plea  
24 agreement in the related criminal case. In the plea agreement, he agreed  
25 to forfeit the 2004 Cadillac, 1963 Impala, 1937 Chevrolet, and 1998 Sea  
26 Doo Bombardier jet ski with trailer at issue in this case. In accordance

1 with his plea agreement, Juvenal Moreno Garcia entered into a Stipulation  
2 for Order of Forfeiture with the United States on January 12, 2010, in  
3 this action. (ECF No. 12.) The Court issued an Order granting the  
4 parties' Stipulation on January 20, 2010. (ECF No. 13.)

5 **C. The Claimants**

6 On December 17, 2009, the USAO sent copies of the Notice of  
7 Complaint, Verified Complaint for Forfeiture *In Rem*, and Warrant of  
8 Arrest *In Rem* to Alfonso Rangel, Antonia Garcia Mendoza, Francisco Moreno  
9 Mendoza, Francisco Moreno, and Juvenal Moreno Garcia. (ECF Nos. 6-10.)  
10 A courtesy copy of each notice was sent to Juvenal Moreno Garcia's wife,  
11 Jasmine Rangel. *Id.* And on January 19, 2010, Luis Corono Martinez was  
12 served with the same. (ECF No. 31.) These notices include clear  
13 instructions on how to file a claim under Supplemental Rule for Admiralty  
14 or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rule")  
15 G(5)(a). The January 21, 2010 claim deadline was clearly articulated  
16 therein. *Id.* To date, no claims have been filed with the Court or  
17 received by the USAO.  
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19 One day after the deadline for filing claims passed, the previously-  
20 notified potential claimants and several others<sup>2</sup> moved for appointment of  
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22 <sup>2</sup> These are Alfonso Rangel, Berta Rangel, Celso Moreno Garcia,  
23 Erika Rangel, Estaban Garcia Mendoza, Francisco Moreno Garcia, Francisco  
24 Moreno Magana, Israel Moreno Garcia, Jasmine Rangel, Juvenal Moreno  
25 Gracia, Luis Cornoa, Mario Gutierrez, Rogelio Moreno Garcia, Uriel Garcia  
26 Mendoza, and Antonia Garcia Mendoza.

1 counsel in this action. (ECF Nos. 14-28.) Although the Court denied the  
2 appointment-of-counsel requests, those individuals were added as  
3 claimants. (ECF No. 34.)

4 On May 11, 2010, the USAO served, via certified mail, Notices of  
5 Motion for Default upon the newly-added potential claimants.<sup>3</sup> (ECF Nos.  
6 36-49.) The Notices indicated that the USAO would move for default  
7 "unless a claim, answer, or motion is filed with the Clerk of the above-  
8 entitled Court within fourteen (14) days." The responses were due May  
9 28, 2010, at the latest. But U.S. Postal Service records show that  
10 although certified mail notice was left on May 13, 2010, delivery was not  
11 made until May 28, 2010. A return receipt was signed "Antolin."

12 On June 1, 2010, Antolin Andrew Marks<sup>4</sup> sent an email to AUSA James  
13 A. Goeke, requesting additional time to respond to the default notices.  
14 On June 24, 2010, Ms. Rangel and Mr. Moreno filed an Answer to Complaint  
15 and Motion to Dismiss. (ECF No. 50.) The Court denied the motion to  
16 dismiss on July 12, 2010. (ECF No. 51.)  
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20 <sup>3</sup> On May 11, 2010, the USAO served via facsimile and certified and  
21 regular U.S. mail, a Notice of Motion for Default upon Luis Corono  
22 Martinez and his Attorney Beau D. McGraw. Mr. McGraw's office sent a  
23 claim via facsimile to the USAO. However, no such claim was filed with  
24 the Court.

25 <sup>4</sup> Mr. Marks is not counsel of record for any party or potential  
26 claimant.

1 Ms. Rangel and Mr. Moreno filed the instant Motion for Summary  
2 Judgment on November 29, 2010; the USAO's Motion to Strike Answer  
3 followed on December 29, 2010.<sup>5</sup>

#### 4 DISCUSSION

5 Ms. Rangel and Mr. Moreno move to dismiss the Complaint because the  
6 USAO cannot prove the property seized was not used in facilitating drug  
7 transactions. The USAO's response is threefold: first, the summary-  
8 judgment motion lacks a factual record upon which the USAO may respond;  
9 second, Ms. Rangel and Mr. Moreno lack standing because they did not  
10 submit a timely claim or answer; and third, even if Ms. Rangel and Mr.  
11 Moreno had standing to participate in this action, no discovery has  
12 occurred and, thus, it is unable to respond at this juncture. In  
13 response, Ms. Rangel and Mr. Moreno maintain that they did in fact file  
14 claims with the administrative agency.<sup>6</sup>

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17  
18 <sup>5</sup> Due to scheduling conflicts with the Court's calendar, hearing on  
19 those motions was reset.

20 <sup>6</sup> Ms. Rangel and Mr. Moreno also ask the Court to strike the  
21 Stipulation for Order of Forfeiture (ECF No. 12) entered into by Juvenal  
22 Moreno Garcia. Yet the Court has already recognized that:

23 Although the Court agrees with Ms. Rangel that Mr. [Juvenal]  
24 Moreno Garcia's stipulation does not eliminate her rights to  
25 the forfeited property, Ms. Rangel has not demonstrated that  
dismissal is appropriate.

26 (ECF No. 51.)

1 Under Supplemental Rule G(8)(c)(i), the USAO may file a motion to  
2 strike the answer or a claim at any time before trial for failure to  
3 comply with Rule G(5), which governs the time for filing an answer or  
4 claim, or lack of standing. Such motion "must be decided before any  
5 motion by the claimant to dismiss the action." Supp. R. G(8)(c)(ii).  
6 Accordingly, the Court addresses the USAO's motion to strike first.

7  
8 **A. The USAO's Motion to Strike Answer**

9 The USAO moves to strike the Answer for failure to comply with  
10 Supplemental Rule G(5) by filing a timely claim. Ms. Rangel and Mr.  
11 Moreno oppose the motion.

12 Supplemental Rule G(5)(A)(1) allows potential claimants who receive  
13 direct notice of the forfeiture to contest the forfeiture by filing a  
14 claim by the date set forth in the notice, which must be "at least 35  
15 days after the notice is sent." *Id.* at G(5)(a)(ii)(A), (4)(b)(ii)(B).  
16 The claim must identify the specific property claimed, identify the  
17 claimant and state the claimant's interest in the property, and be signed  
18 by the claimant under penalty of perjury. *Id.* at G(5)(a)(i)(A)-(C).  
19 Further, Supplemental Rule G(5)(B) provides that a "claimant must serve  
20 and file an answer to the complaint or a motion under Rule 12 within 21  
21 days after filing the claim." *Id.* at G(5)(B).

22  
23 Courts have routinely stricken claims that do not comply with the  
24 Supplemental Rules' claim and answer deadline. *See, e.g., United States*  
25 *v. Ford 250 Pickup 1990 VIN No. 1FTHX26M1LKA69552*, 980 F.2d 1242, 1245  
26 (8th Cir. 1992); *\$19,840.00 in U.S. Currency More or Less*, 552 F. Supp.

1 2d at 635-36 (Claimant who timely filed claim was properly defaulted for  
2 filing answer two days late, entitling the government to final judgment  
3 forfeiting claimant's interest in the property.).

4 On December 17, 2009, the USAO sent direct notice - a copy of the  
5 Verified Complaint for Forfeiture *in Rem* and related documents - to all  
6 individuals who the FP&F identified as appearing to have an interest in  
7 the merchandise seized.<sup>7</sup> The notices fully complied with Supplemental  
8 Rule G(4)(b)(ii)'s content requirements: each stated the date when the  
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10 <sup>7</sup> These individuals are Alfonso Rangel, Antonia Garcia Mendoza,  
11 Francisco Moreno Mendoza, Francisco Moreno, Juvenal Moreno Garcia, and  
12 Luis Corono Martinez. A courtesy copy of each notice was sent to Jasmine  
13 Rangel. Ms. Rangel and Mr. Moreno argue, without any explanation, that  
14 the direct notices should have been sent to all potential claimants, not  
15 just those identified by the FP&F as potentially having an interest in  
16 the seized property. The Court disagrees: at the time the direct notice  
17 was sent (before any potential claimants filed documents with the Court)  
18 the only individuals appearing to have an interest in the property were  
19 those the FP&F identified as potentially having an interest in the seized  
20 property. See Supp. R. G(4)(b)(ii) (The USAO "must send notice of the  
21 action and a copy of the complaint to any person who reasonably appears  
22 to be a potential claimant on the facts known to the [USAO.]"). Each was  
23 sent via certified and regular U.S. mail. See *id.* at G(4)(b)(iii)  
24 (requiring notice to be sent by means "reasonably calculated to reach the  
25 potential claimant"). Accordingly, the USAO's notice was proper.  
26



1 notice was sent (December 17, 2009); a deadline for filing the claim, at  
2 least thirty-five (35) days after notice was sent (January 21, 2010)<sup>8</sup>;  
3 that an answer or Federal Rule of Civil Procedure 12 motion must be filed  
4 within twenty-one (21) days after filing the claim; and the name of the  
5 attorney to be served. Any potential claimants therefore had until  
6 January 21, 2010, to file a claim in this forfeiture proceeding. They  
7 did nothing until January 22, 2010, when the above-named potential  
8 claimants filed Motions to Appoint Counsel (ECF Nos. 14-28). These  
9 motions do not, however, comply with Supplemental Rule G(5) (A) (1)'s claim  
10 requirements: they are untimely and not signed under penalty of perjury.<sup>9</sup>

11  
12 Furthermore, Ms. Rangel and Mr. Moreno's June 24, 2010 Answer is  
13 over four months late. Had the potential claimants timely filed claims,  
14 the last date to file an answer or a Rule 12 motion would have been  
15 twenty-one (21) days after January 21, 2010: February 11, 2010.<sup>10</sup> Thus,  
16 even if the Court liberally construed their Motions for Appointment of  
17 Counsel (ECF Nos. 14-28) as claims, Ms. Rangel and Mr. Moreno have failed  
18 to demonstrate how their June 24, 2010 Answer was timely. Accordingly,  
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20 <sup>8</sup> February 23, 2010, as to Luis Corono Martinez only.

21 <sup>9</sup> Indeed, the Court has serious misgivings as to whether each  
22 potential claimant actually signed his or her motion: the handwriting is  
23 so similar it appears that one person signed all the Potential Claimants'  
24 Motions to Appoint Counsel (ECF Nos. 14-28).

25 <sup>10</sup> Or, as to Luis Corono Martinez only, twenty-one (21) days after  
26 February 23, 2010: March 16, 2010.

1 the Court concludes that the potential claimants have failed to file a  
2 timely claim and answer.

3 Courts typically require strict compliance with Supplemental Rule  
4 G(5)'s procedural requirements. *United States v. \$487,825.00 in U.S.*  
5 *Currency*, 484 F.3d 662, 665 (3d Cir. 2007) ("Courts have repeatedly  
6 emphasized that forfeiture claimants must strictly adhere to the filing  
7 requirements to perfect standing."); *United States v. \$38,000.00 Dollars*  
8 *in U.S. Currency*, 816 F.2d 1538, 1547 (11th Cir. 1987) ("Courts  
9 consistently have required claimants to follow the language of the  
10 Supplemental rules to the letter."); *United States v. 40 Acres of Real*  
11 *Property, More or Less*, 629 F. Supp. 2d 1264 (S.D. Ala. 2009) (same);  
12 *United States v. \$19,840.00 in U.S. Currency More or Less*, 552 F. Supp.  
13 2d 632, 636 (W.D. Tex. 2008) ("In order to defend against a forfeiture,  
14 a claimant must timely file both a claim and an answer."); *United States*  
15 *v. \$50,200 In U.S. Currency*, 76 F. Supp. 2d 1247, 1256-57 (D. Wyo. 1999)  
16 (finding claimant who filed answer but no claim lacked statutory  
17 standing). This responsibility rests with the claimant, as long as the  
18 USAO provides proper notice. See *United States v. Real Property*, 135  
19 F.3d 1312, 1317 (9th Cir. 1998) ("So long as the Government takes steps  
20 mandated by due process to notify the record owner of an impending  
21 forfeiture, it is the owner's responsibility to comply with the  
22 procedural requirements for opposing the forfeiture.").

23 Yet "a court has discretion in appropriate circumstances to depart  
24 from the strict compliance standard." *United States v. Amiel*, 995 F.2d  
25

1 367, 371 (2d Cir. 1993); see also Supp. R. G(5)(a)(ii) (recognizing the  
2 Court's discretion to extend the claim-filing deadline for good cause).  
3 But Ms. Rangel and Mr. Moreno fail to identify any special or extenuating  
4 circumstances that might warrant relaxation of the Supplemental Rule  
5 G(5)(b) requirement that they file a proper claim and an answer within  
6 twenty (20) days after the claim.

7  
8 By the time for filing an answer had passed, Ms. Rangel had been  
9 notified of Rule G's time requirements on two occasions: first, in the  
10 courtesy copy of the direct notices sent on December 17, 2009, and  
11 second, in the USAO's Memorandum in Opposition to Motions for Appointment  
12 of Counsel (ECF No. 32), filed February 8, 2010. And Mr. Moreno entered  
13 the action as a potential claimant by February 8, 2010, and thus  
14 similarly received notice of the time for filing an answer.

15 Further, well after the time for filing a claim and answer had  
16 passed, the USAO gave the potential claimants an opportunity to avoid  
17 default. Notices of Motion for Default (ECF Nos. 36-49), which notified  
18 the potential claimants that the USAO would move for default if no claim  
19 or answer was filed within fourteen days, were served upon the newly-  
20 added potential claimants on May 28, 2010. No potential claimant took  
21 any action until Ms. Rangel and Mr. Moreno filed an answer on June 24,  
22 2010. Although Ms. Rangel and Mr. Moreno asked the AUSA via email for  
23 additional time to file an answer, they never petitioned this Court for  
24 such extension. And even though the Potential Claimants may have filed  
25 claims in the related administrative forfeiture action (ECF No. 63; & ECF  
26

1 No. 32, Attach. C), "those claims are not a substitute for filing a  
2 verified claim in the judicial forfeiture action because summary  
3 administrative forfeitures and judicial forfeitures are separate  
4 proceedings." *United States v. \$7,000.00 in U.S. Currency*, 583 F. Supp.  
5 2d 725, 735 (M.D.N.C. 2008) (quoting *United States v. \$48,000 U.S.*  
6 *Currency*, No. 06-10952, 2007 WL 1467159, at \*3 (E.D. La. May 18, 2007)).  
7

8 The Potential Claimants never suggested they lacked direct notice.  
9 They never suggested that the USAO encouraged the delay, or advised the  
10 Court or the USAO of their interest in the property before the claim  
11 deadline. The Court has no reasonable explanation for the Potential  
12 Claimant's failure to file a timely claim or answer with this Court and,  
13 thus, no basis to deviate from the strict compliance and standing  
14 requirements of the Supplemental Rules. Accordingly, the USAO's Motion  
15 to Strike Answer (ECF No. [59](#)) is **GRANTED**; the Potential Claimants' Answer  
16 is **STRICKEN** for failure to comply with applicable procedural  
17 requirements.  
18

#### 19 CONCLUSION

20 Accordingly, **IT IS HEREBY ORDERED:**

- 21 1. The USAO's Motion to Strike Answer (ECF No. [59](#)) is **GRANTED**.
- 22 2. The Potential Claimants' Answer to Complaint & Motion to Dismiss  
23 (ECF No. [50](#)) is **STRICKEN**.
- 24 3. The Potential Claimants' Motion for Summary Judgment (ECF No.

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26

1 55) is **DENIED AS MOOT**.

2       **IT IS SO ORDERED.** The District Court Executive is directed to enter  
3 this Order and to provide copies to all counsel.

4       **DATED** this 26th day of April 2011.

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7                               s/Edward F. Shea  
8                               EDWARD F. SHEA  
9                               United States District Judge

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